UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LOCAL 560, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

and

Cases 22-CC-083895
22-CE-084893

COUNTY CONCRETE CORPORATION

ORDER

The General Counsel has filed a renewed motion for default judgment in this case pursuant to the terms of an informal settlement agreement and the Board's instructions in *Teamsters Local 560 (County Concrete Corp.)*, 362 NLRB No. 183 (2015) (denying, without prejudice, the General Counsel's motion to strike portions of the Respondent's answer, for summary default judgment, and for the issuance of a Board decision and order, and permitting the General Counsel to file a renewed motion). For the reasons described below, we deny the General Counsel's renewed motion for default judgment.

On June 25, 2012, County Concrete Corporation (the Charging Party) filed charges in Cases 22-CC-083895 and Case 22-CE-084893 alleging that Local 560, International Brotherhood of Teamsters (the Respondent) had violated Section 8(b)(4)(ii)(A) and (B) and Section 8(e) of the Act, respectively. Subsequently, the parties executed an informal settlement agreement, which the Regional Director for Region 22 approved on August 1, 2012.

On February 28, 2013, the Charging Party filed a charge in Case 22-CC-099341, alleging that the Respondent engaged in additional violations of Section 8(b)(4)(ii)(A) and (B). According to the General Counsel, the Regional Director, finding merit in these allegations, notified the Respondent that it was in breach of the settlement agreement's Performance

provision. The General Counsel contends that the Respondent has been afforded an opportunity to cure the default and resolve the underlying dispute but has failed to do so.

Pursuant to the terms of the settlement agreement, on April 29, 2013, the Regional Director issued an Order Consolidating Cases 22-CC-083895, 22-CE-084893, and 22-CC-099341, a Consolidated Complaint and a Notice of Hearing. The Respondent filed an answer. The General Counsel took the position that the alleged violations in Case 22-CC-099341 constituted a breach of the terms of the settlement agreement, and on May 29, 2013, he filed with the administrative law judge who was to hear the cases a Motion to Strike Portions of Respondent's Answer, for Summary Default Judgment, and for the Issuance of Board Decision and Order in Cases 22-CC-083895 and 22-CE-084893 (motion for summary default judgment). The General Counsel asked the judge to forward the motion and its associated papers to the Board if the judge found the violations alleged in Case 22-CC-099341. The judge did find the violations in that case and granted the General Counsel's request to forward the motion for summary default judgment to the Board.

The Respondent filed exceptions to the judge's unfair labor practice findings in Case 22-CC-099341. In an August 26, 2015 decision in *Teamsters Local 560 (County Concrete Corp.)*, 362 NLRB No. 183, we found that the Respondent had waived any challenge to the judge's determination that it violated Section 8(b)(4)(ii)(A) (including the predicate violation of Section 8(e)), and we adopted, with explanation, the judge's finding that the Respondent had also violated Section 8(b)(4)(ii)(B). However, we denied, without prejudice, the General Counsel's motion for summary default judgment. Although the General Counsel argued that, by committing the violations we found in Case 22-CC-099341, the Respondent had breached the terms of the settlement agreement in Cases 22-CC-083895 and 22-CE-084893, we concluded

that we were "unable to discern from the General Counsel's motion and supporting memorandum the specific terms of the settlement agreement the General Counsel contends that the Union has breached as a result of the violations it committed in the instant case, nor is such breach readily self-evident." 362 NLRB No. 183, slip op. at 3. We allowed the General Counsel to renew his motion, however, and to explain "the relationship between the violations in [Case 22-CC-099341], the terms of the settlement agreement [in Cases 22-CC-083895 and 22-CE-084893], and the 'Performance' provision of the settlement agreement." Id.

Subsequent to our decision, on September 28, 2015, the General Counsel filed, via letter brief, a "renewed Motion for Default Judgment" in Cases 22-CC-083895 and 22-CE-084893. The renewed motion for default judgment is the subject of the instant proceeding. In his renewed motion, the General Counsel summarizes the nature of the allegations in these cases, quotes the Performance provision from the settlement agreement, and argues that the Respondent's conduct in Case 22-CC-099341, found by the Board to have violated the Act, "specifically breached the terms of the parties' August 1, 2012 settlement agreement." On October 1, 2015, the Board issued an Order Transferring Proceeding to the Board and Notice to Show Cause why the General Counsel's renewed motion should not be granted. The Respondent filed no response.[1] The allegations in the renewed motion are therefore undisputed.

We find that the General Counsel, in response to our above-quoted instructions, has provided a sufficient explanation of how the violations in *Teamsters Local 560 (County Concrete Corp.)*, supra, 362 NLRB No. 183, breached the terms of the Performance provision in the

[1] The General Counsel subsequently filed a letter clarifying which copy of the settlement agreement we should analyze in ruling on his renewed motion. The Respondent did not file a response to this letter.

Settlement Agreement.[2] However, we are compelled to *deny* the renewed motion for default judgment because we find that the complaint in Cases 22-CC-083895 and 22-CE-084893 fails to allege violations of Section 8(e), 8(b)(4)(ii)(A), and 8(b)(4)(ii)(B). Thus, deeming all the allegations in the complaint admitted pursuant to the Performance provision would not result in violations of the Act. In other words, taking the complaint allegations as true, we cannot make conclusions of law adverse to the Respondent or issue a remedial order because the allegations do not make out violations of Section 8(e), 8(b)(4)(ii)(A), and 8(b)(4)(ii)(B). We explain why in the margin, below.[3]

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[2] The Performance provision in the settlement agreement states:

> The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a complaint that will include the allegations spelled out above in the Rider to the Scope of Agreement section. Thereafter, the General Counsel may file a motion for default judgment with the Board on allegations of the complaint. The Charged Party understands and agrees that all of the allegations of the complaint will be deemed admitted and it will have waived its right to file an Answer to such complaint. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. Such order shall be recognized as equivalent to a plea of *nolo contendere* and shall not negate the terms of the Non-Admissions provision. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel.

[3] Paragraphs 7(a)-13 of the complaint, which relate to Cases 22-CC-083895 and 22-CE-084893, allege as follows:

7(a). At all material times, Respondent has been engaged in a labor dispute with the Charging Party.

7(b). At no material time has Respondent been engaged in a primary labor dispute with . . . Phelps Construction Corp. . . .

8. About March 1, 2012, Respondent entered into a Project Labor Agreement ("PLA"), which provides, in Article 3, Section 2A.2, that ready mix, concrete and cement contractors are subject to its provisions.

9. By entering into and maintaining the provisions of the PLA described above in paragraph 8, Respondent has entered into and maintained an agreement in which Respondent [sic] has agreed not to do business with any other employer or person.

10. In April 2012, Respondent, in support of its dispute with the Charging Party described above in paragraph 7(a), by Anthony Valdner, threatened to file a grievance against Phelps to enforce the section of the PLA listed above in paragraph 8.

11. By the conduct described above in paragraph 10, Respondent has threatened, coerced or restrained Phelps and other persons engaged in commerce or in industries affecting commerce.

12. An object of Respondent's conduct described above in paragraph 10 has been to force or require the Charging Party to enter into an agreement that is prohibited by Section 8(e) of the Act.

13. An object of Respondent's conduct described above in paragraph 10 has been to force or require the Charging Party [sic] to cease handling or otherwise dealing in the products of, and to cease doing business with, the Charging Party.

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20. By the conduct described above in paragraphs 8 and 9, Respondent has been violating Section 8(e) of the Act.

21. By the conduct described above in paragraphs 8 through 12 . . . , Respondent has been violating Section 8(b)(4)(ii)(A) of the Act.

22. By the conduct described in paragraphs 10, 11, 13 . . . Respondent has been violating Section 8(b)(4)(ii)(B) of the Act.

First, we find that the complaint fails to allege a violation of Sec. 8(e). The 8(e) allegation, according to paragraph 20 of the complaint, is based on the conduct described in paragraphs 8 and 9 of the complaint. Paragraph 8 appropriately alleges that the Respondent entered into a PLA, which provides, in Article 3, Section 2A.2, that ready mix, concrete and cement contractors are subject to its provisions. Paragraph 9, however, does not provide a basis for finding an 8(e) violation. As quoted above, paragraph 9 states that, "by entering into and maintaining the provisions of the PLA described above in paragraph 8, Respondent has entered into and maintained an agreement in which *Respondent* has agreed not to do business with any other employer or person." (Emphasis supplied.) However, the issue for determining whether Sec. 8(e) has been violated is not whether the *Respondent* has agreed not to do business with any other employer or person. Rather, the issue is whether the Respondent has entered into an agreement whereby *signatory employers* have agreed not to do business with any other person. Because the complaint does not allege a violation of Sec. 8(e), we cannot enter a default judgment finding that the Respondent violated Sec. 8(e).

Second, we are compelled to find that the 8(b)(4)(ii)(A) allegation, which is based on the allegations set forth in paragraphs 8 through 12 of the complaint, also fails to set forth a legally cognizable violation. As relevant here, Sec. 8(b)(4)(ii)(A) makes it "an unfair labor practice for

IT IS ORDERED that the General Counsel's renewed motion for default judgment is denied, and the proceeding is remanded to the Regional Director for appropriate action consistent with this Order.

Dated, Washington, D.C., October 17, 2017.

Philip A. Miscimarra, Chairman

Mark Gaston Pearce, Member

Lauren McFerran, Member

(Seal) NATIONAL LABOR RELATIONS BOARD

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a labor organization or its agents . . . to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where . . . an object thereof is forcing or requiring any employer . . . to enter into any agreement which is prohibited by section 8(e)." Since the complaint fails to allege a predicate violation of Sec. 8(e), it necessarily also fails to allege a violation of Sec. 8(b)(4)(ii)(A). We are therefore compelled to dismiss the 8(b)(4)(ii)(A) allegation as well.

Finally, we find that the complaint fails to allege a violation of Sec. 8(b)(4)(ii)(B). Sec. 8(b)(4)(ii)(B) states, in relevant part, that it is an unfair labor practice "for a labor organization or its agents . . . to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where . . . an object thereof is . . . forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer . . . or to cease doing business with any other person . . . ." Paragraph 13 alleges that "[a]n object of Respondent's conduct described above in paragraph 10 has been to force or require the *Charging Party* to cease handling or otherwise dealing in the products of, and to cease doing business with, the Charging Party." (Emphasis supplied.) In other words, paragraph 13 alleges that an object of the Respondent's conduct has been to force or require the Charging Party to cease handling or otherwise dealing in its *own* products (rather than the products of another producer) or to cease doing business with *itself* (rather than another person). Accordingly, we cannot enter a default judgment finding that the Respondent violated Sec. 8(b)(4)(ii)(B).

In sum, we find that the complaint fails to allege a violation of Sec. 8(e), 8(b)(4)(ii)(A), or 8(b)(4)(ii)(B) in Cases 22-CE-084893 and 22-CC-083895. On this basis, the renewed motion for default judgment must be denied. We emphasize that nothing in our decision affects the remedies ordered in *Teamsters Local 560 (County Concrete Corp.)*, 362 NLRB No. 183 (2015). Member Pearce additionally observes that the remedies for any violations in Cases 22-CC-083895 and 22-CE-084893 would be, in any case, essentially cumulative of the remedies ordered in *Teamsters Local 560 (County Concrete Corp.)*, supra.